



FAIR POLITICAL PRACTICES COMMISSION

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March 17, 2009

Mr. Edwin "Thorpe" Romero
Chairman, Barona Band of Mission Indians
1095 Barona Road
Lakeside, California 92040-1599

Re: Your Request for Advice
Our File No. I-09-044

Dear Mr. Romero:

This letter responds to your request for advice regarding the gift and campaign provisions of the Political Reform Act (the "Act").¹ Because your letter seeks general information, we are providing you informal assistance.²

QUESTION

Will the Barona Tribe's awarding of education grants to schools, where each grant application is accompanied by a letter of endorsement from a state legislator, result in a reportable gift from the Barona Tribe to the state legislators who submit letters of endorsement?

CONCLUSION

Under the Act, the Barona Tribe's awarding of the education grants will not result in reportable contributions or gifts from the Barona Tribe to state legislators who submit letters of endorsement on behalf of the schools receiving the grants. A state legislator who submits an endorsement letter for a school that is the recipient of a grant of \$5,000 or more will be required to file a "behested payment" report under Section 82015(b)(2)(B)(iii).

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

The Barona Band of Mission Indians ("Barona Tribe") provides education grants to public and private schools to assist the schools in purchasing much-needed supplies and materials, such as books and computers.

Under the Barona Tribe's Education Grant Program, a school may apply for a \$5,000 grant to be used for materials that promote academic improvement, including books, computers, and laptops. Grant funds may not be used for personnel, wages, sports equipment, athletic or recreational equipment, giveaway books, office furniture or supplies. Each grant application must be accompanied by a letter of endorsement from a state legislator. A school may receive one grant per year; and only one grant per year may be awarded per legislator. The Barona Tribe invites the legislator who provides the endorsement letter for a school that is awarded a grant to participate in the presentation of the check to the school. The Barona Tribe provides no tangible benefits, such as food or drink, to the legislator as part of the presentation of the check.

ANALYSIS

The Act defines a "contribution" as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." (Section 82015.)

Regulation 18215 further defines the term "contribution" as follows:

"(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or *made at the behest of* the following or any agent thereof:

(A) *A candidate;*

(B) A controlled committee;

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or

(D) An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation . . ."

(Emphasis added.)

In addition, the Act's contribution limits provide that no person may make a contribution to a state legislator of more than \$3,900 per election. (Section 85301.) Accordingly, the Barona Tribe seeks advice as to whether the education grants it provides to schools at the behest of legislators will constitute contributions under the Act.

As cited above, the Act states that a "contribution" includes a payment made at the behest of a candidate.³ (Section 82015(b).) A payment is made at the "behest" of a candidate whenever it is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of a candidate. (Section 82015; Regulation 18225.7.) Section 82015(b)(2) sets forth several exceptions to the general rule that a payment made at the behest of a candidate is a contribution. Specifically, Section 82015(b)(2) provides that a behested payment is not a contribution under the following circumstances:

"(A) Full and adequate consideration is received from the candidate.

"(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

"(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

"(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

"(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution . . ."

Here, the payments from the Barona Tribe to the schools are clearly made "at the behest" of a state legislator, as each grant application must be accompanied by a letter of endorsement from a state legislator. However, the grants fall within the exception to the definition of contributions and gifts under Section 82015(b)(2)(B)(iii) for certain payments made at the behest of a candidate that are unrelated to his or her candidacy for elective office and "principally for legislative, governmental, or charitable purposes." Accordingly, the education grants provided to schools by the Barona Tribe with the endorsement of legislators do not result in reportable contributions or gifts by the Barona Tribe to the state legislators under the Act.

In connection with the education grant program, The Barona Tribe may wish to advise the legislators that they will be required to file a behested payment report


³ Under the Act, an elected officer retains his or her status as a candidate until he or she terminates that status as provided in Section 84214 and Regulations 18404 and 18404.1. (Section 82007.)

concerning a grant of \$5,000 or more to a school. Section 82015(b)(2)(B)(iii), copy enclosed, provides that, even if a payment made at the behest of an elected officer is not a contribution to that officer, the officer must file a report describing the payment. The "behested payment report" must be filed with the officer's agency within 30 days of the date of the payment. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. A legislator who recommended a school receiving a grant would file a behested payment report with the Senate or the Assembly. For state agencies, a copy of the report is forwarded to the Commission and information concerning behested payments is posted on the Commission's website.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel


By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl

Enclosure